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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

GOLDEN WEST HEALTH PLAN, INC., Plaintiff and Respondent, v. FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA, Defendant and Appellant.	B205246 (Los Angeles County Super. Ct. No. BC353849)

APPEAL from a judgment of the Superior Court of Los Angeles County. Kenneth R. Freeman, Judge. Reversed.

Edmund G. Brown, Jr., Attorney General, W. Dean Freeman, Felix Leatherwood and Marla K. Markman, Deputy Attorneys General, for Defendant and Appellant.

Greenberg Traurig, Norman H. Lane and Frank E. Merideth for Plaintiff and Respondent.

In a case addressing the interplay between state and federal tax law, the Franchise Tax Board appeals from a judgment in favor of taxpayer Golden West Health Plan, Inc. Because the trial court erred, as a matter of law, in determining that the taxpayer was entitled to a refund, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

This case was tried on stipulated facts to the trial court. Respondent Golden West Health Plan, Inc. ("Golden West"), a California corporation, filed with the Internal Revenue Service in June 1989, an election to be treated as an S corporation for federal income tax purposes. Although it received notice in November 1989 that its election was effective, in fact it had failed to file required consents of all shareholders and shareholder spouses. In 2002, in preparation for a sale of its stock, Golden West discovered the lack of consents, and sought relief under the provisions of Internal Revenue Code section 1362(f) in accordance with the procedures set forth in Treasury Regulation, 26 C.F.R., section 1.1362-6(b)(3)(iii). The IRS granted relief in April 2003 and deemed the election valid as of its date of initial filing in 1989. In December 2003, Golden West applied for a Chief Counsel Ruling from the Franchise Tax Board as to its status for California tax purposes; the opinion, dated December 29, 2003, indicated that the corporation had a valid S election as of January 1, 1997, and expressed no opinion as to status for prior years.

Since 1989, Golden West had at all times acted as an S corporation, for California and federal purposes. That status became relevant because, if Golden West had not been a valid S corporation for 10 years prior to the 2003 sale, it was subject to an additional California gains tax on the sale of its assets in June 2003. Golden West filed a tax return for 2003, paying the additional tax and timely sought a refund in the amount of $699,045. It filed a complaint for overpayment of taxes on June 15, 2006. The matter was tried to the court on stipulated facts on July 27, 2007, and taken under submission. On

September 19, 2007, the trial court granted judgment to Golden West in the amount of $738,595.74. Appellant Franchise Tax Board ("Board") timely appealed.

DISCUSSION

To be treated as an S corporation, qualifying and electing small business corporations must be eligible to file an election; file an election; and obtain the consent of all shareholders at the time of the election. If any of these criteria are not met, the election is considered invalid for federal tax purposes. (Int. Rev. Code, § 1362; 26 C.F.R., § 1362.)

Section 1362(f) of the Internal Revenue Code ("§ 1362(f)"), was amended in 1996 to confer authority on the Internal Revenue Service to treat late filed elections as timely. Pursuant to that section, a corporation that had elected to be treated as a S corporation but which had inadvertently failed to obtain the consents of all persons who were shareholders at the time of election, could be granted time extensions in which to file the consents. (§ 1362, subd. (f).) Where the extension was granted and the consents timely filed, the S election would then be considered valid as of the original date of the election. (*Ibid.*) For federal purposes, these revisions applied retroactively to income years beginning after December 31, 1982. (Small Business Job Protection Act of 1996, Pub. L. No. 104-188 (August 20, 1996), 110 Stat. 1755, 1779, §1305.)[1]

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[1] Section 1362(f) of the Internal Revenue Code, as amended in 1996 by section 1305(a) of the same law, provides as follows: "(f) Inadvertent Invalid Elections or Terminations -- If -- [¶] (1) an election under subsection (a) by any corporation -- [¶] (A) was not effective for the taxable year for which made (determined without regard to subsection (b)(2), by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or [¶] (B) was terminated under paragraph (2) or (3) of subsection (d), [¶] (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, [¶] (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken -- [¶] (A) so that the corporation is a small business corporation, or [¶] (B) to acquire the required shareholder consents, and [¶] (4) the

The California Legislature generally follows the federal statutes in implementing California's tax provisions. (See *People v. Hagen* (1998) 19 Cal.4th 652, 661). While the Revenue and Taxation Code generally provides that Internal Revenue Code provisions relating to S corporations apply, except as otherwise provided (Rev. & Tax. Code, § 23800), the Internal Revenue Code is revised on an ongoing basis. As a result, changes in federal law do not automatically apply, but must be reviewed by the Legislature and adopted with an effective date. California adopted conforming legislation to section 1362(f) in 1997. (Rev. & Tax. Code, § 23801 subd. (i).) In relevant part it provides that: "The provisions of Section 1362(f) of the Internal Revenue Code relating to inadvertent invalid elections or terminations, shall apply only for taxable years beginning on or after January 1, 1997, with respect to elections under Section 1362(a) of the Internal Revenue Code for taxable years beginning on or after January 1, 1997." (Rev. & Tax. Code, § 23801, subd. (i).)[2].

At the time Golden West requested relief, both federal and state law permitted such relief. The dispute here turns on the meaning of the California conformity legislation; specifically whether the Legislature intended to limit the retroactive effect of its conforming legislation to the time period beginning on January 1, 1997.

"When a court attempts to discern the meaning of a statute, 'it is well settled that we must look first to the words of the statute, "because they generally provide the most reliable indicator of legislative intent." [Citation.] If the statutory language is clear and unambiguous, our inquiry ends. "If there is no ambiguity in the language, we presume

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corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary."

[2] Effective January 1, 2002, this subdivision was renumbered to 23801 subdivision (i). It was originally enacted as subdivision (j).

the Legislature meant what it said and the plain meaning of the statute governs." [Citations.] In reading statutes, we are mindful that words are to be given their plain and commonsense meaning.' [Citation.]" (*Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 639-640.)

Here, the statutory language of Revenue and Taxation Code, section 23801 subdivision (i) is clear and unambiguous. The plain wording of the statute demonstrates that the Legislature intended the provision to apply only to income years beginning on or after January 1, 1997. The view that the statute was intended instead to apply the effective date for federal purposes, with its more expansive reach backwards, requires us to adopt an interpretation that ignores the specific language of the enactment limiting the time span of the relief available; such an interpretation rendering language useless or redundant is to be avoided. (*AIU Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807, 826-827 [courts should disfavor interpretations that render language meaningless or superfluous].)

Moreover, even were we to view the language as ambiguous, the legislative history of Section 23801(i) prevents us from construing the statute in favor of Golden West. The analysis confirms that the reason for affording only limited, prospective relief to taxpayers who did not properly make S corporation elections was concern for the fiscal well-being of the State of California. The legislative history reads in pertinent part that: "Last year federal legislation liberalized S corporation laws in a number of ways: [¶] . . . [¶] 5. When a taxpayer inadvertently makes an invalid election to become an S corporation, the IRS would be permitted, retroactively, to waive the effect of the inadvertent invalid election. [¶] . . . [¶] As mentioned in-depth, the bill generally adopts the new federal provisions, with exceptions. The reasons for those exceptions are: [¶] . . . [¶] 2. Inadvertent perfection of S elections on a prospective basis only – to allow retroactive perfection of S elections could present the state with unknown amounts of refunds based on prior years' taxes." (Sen. Rules Com., Off. Of Sen. Floor Analysis, 2d

reading analysis of Sen. Bill No. 5 (1997-1998 Reg. Sess.) as amended Sept. 11, 1997, par. I.)[3]

Golden West asserts, however, that because its application was filed under a Treasury Regulation that predated both the federal and California statutory changes (Treas. Reg., 26 C.F.R., § 1.1362-6(b)(3)(iii)[4]) , any time limitations in the California conformity legislation should not limit the relief available to it. However, as stipulated by the parties, the application was filed under the authority of the regulations adopted pursuant to section 1362(f).Thus whether the taxpayer could have applied at an earlier date, or under different authority, is irrelevant to our conclusion. Moreover, because at the time the application was filed, California had already limited the retroactivity permitted, application of the federal regulation would not have resulted in relief under state law. (Rev. & Tax. Code, § 23051.5, subd. (d) ["When applying the Internal Revenue Code for purposes of this part, regulations promulgated in final form or issued as temporary regulations by "the secretary" shall be applicable as regulations issued under this part to the extent that they do not conflict with this part or with regulations issued by the Franchise Tax Board."] While "the value of legal coherence in an area where our laws are generally modeled on the federal system, suggest we should take interpretive guidance from federal decisions" this is not the case where our own statutes demand a different interpretation. (*People v. Hagen, supra,* 19 Cal.4th at p. 666; *Holmes v. McColgan* (1941) 17 Cal.2d 426, 430.) Here, the express inclusion by the Legislature of a time limitation on the effectiveness of the relief demands such a different interpretation.

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[3] The provisions of Senate Bill No. 455 had its origins in Senate Bill No. 5. There is no substantive difference in the section at issue as it appeared in both Senate Bill No. 5 and Senate Bill No. 455. The legislative history that applies to Senate Bill No. 5 also applies to Senate Bill No. 455.

[4] Treasury Regulation, 26 Code of Federal Regulations, section 1.1362-6(b)(3)(iii) authorizes the IRS to grant extensions of time for filing shareholder consents when an election would have been timely filed except for the failure to include a timely consent.

DISPOSITION

For the reasons set forth above, the judgment of the trial court is reversed and the trial court is directed to enter judgment for Appellant in this matter. Each side is to bear its own costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.